

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-219410

FILE:

DATE: September 18, 1985

HSQ Technology

MATTER OF:

DIGEST:

1. A protester fails to prove that the proposal evaluation process was biased or that the technical evaluations were unreasonable where no independent evidence of bias is provided and the record reasonably supports the contracting agency's technical judgment.
2. Agency may award negotiated contract on the basis of initial proposals without discussions if adequate competition is obtained, to ensure a fair and reasonable price, and the RFP advises offerors of the possibility that award might be made without discussions.
3. Protest alleging that RFP's evaluation factors were deficient filed after the closing date for receipt of proposals is untimely and will not be considered.

HSQ Technology protests the award of a contract to Williams Electric Company under request for proposals (RFP) No. DACA63-85-R-0047, issued by the Fort Worth District Army Corps of Engineers for a computer-based Energy Monitoring and Control System (EMCS) at the Dyess Air Force Base, Texas. HSQ alleges that members of the technical evaluation panel were biased against HSQ and did not fairly evaluate its proposal. In addition, HSQ complains that its EMCS has been found acceptable in past procurements and that it is inconceivable that the Fort Worth District could reach a different conclusion. Also, HSQ argues that the RFP's evaluation criteria were deficient and that the Corps acted improperly by failing to conduct discussions with HSQ.

We deny the protest in part and dismiss it in part.

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The RFP provided that proposals would be evaluated on technical merit, price and each offeror's prior EMCS and fiber optics experience. Offerors were advised that technical criteria were weighted approximately 1-1/2 times greater than price and 3 times greater than experience. Price was weighted approximately 2 times greater than experience. Under the evaluation scheme, award was to be made to that offeror who meets or exceeds the intent of the solicitation and who obtains the highest point score, technical, price and experience factors considered. The Corps reserved the right to make an award based on initial proposals without conducting discussions.

The Corps indicates that five proposals were received. After an initial review, all firms were requested to submit additional data to complete their proposals as part of the ongoing evaluation process to determine the competitive range. Cf. ALM, Inc.; Technology, Inc., B-217284, et al., Apr. 16, 1985, 85-1 CPD ¶ 433. Thereafter, an evaluation team was convened and each proposal was reviewed by four members of that team. The results were as follows:

	<u>Technical</u>	<u>Price</u>	<u>Experience</u>	<u>Total</u>
Williams Electric	3633	2300	1200	7133
EDG	3011	2650	600	6261
HSQ	2578	2700	480	5998
CSC	2860	2050	480	5390
Kidde	2230	1800	480	4510

After reviewing the results, the Selection Board determined to make an award since Williams Electric's proposal was acceptable, there was no change in the government's requirements and the award would otherwise be in the government's best interests. A satisfactory preaward survey was conducted and award was made to Williams Electric on June 19, 1985.

HSQ argues that two members of the Corps' evaluation team were biased against HSQ because of disagreements over HSQ's performance in past contracts. HSQ states that a dispute had arisen concerning the Fort Worth District's interpretation of the specifications for an EMCS. Because HSQ refused to accept the Corps' interpretation, the Corps has attempted to disqualify HSQ from all future EMCS contracts. HSQ indicates that two evaluators who evaluated its proposal were involved in the dispute and have made prejudicial statements concerning HSQ. HSQ argues that their prejudices prevented those evaluators from conducting an objective evaluation.

In addition, HSQ argues that the Corps was required to conduct discussions with HSQ since HSQ was in the competitive range. Also, HSQ alleges that the award without discussions was improper because Williams Electric did not meet all of the RFP's technical requirements nor did the firm offer the lowest price. Finally, HSQ argues that the RFP's evaluation factors were deficient and that the relationship of price to the other factors was too imprecise and permits arbitrary and capricious evaluations.

The Corps disputes that its evaluators harbored any prejudice. The Corps further notes that one of the allegedly biased evaluators did not even review HSQ's proposal and that an analysis of the scoring of the other reveals no evidence of any bias. The Corps recalculated HSQ's overall score without the point totals of the allegedly biased individual and indicates that there was no change in HSQ's ranking.

Also, the Corps states that it was not required to conduct discussions prior to awarding the contract to Williams Electric. The Corps states that Williams Electric's proposal was technically acceptable, that its total price was below the government's estimate and considered fair and reasonable, and that award without further discussions was in the government's best interests. The Corps argues that all proposals were fairly evaluated, that the evaluations were conducted in conformance with the RFP's evaluation scheme and that Williams Electric, the highest rated offeror, was properly awarded the contract.

Concerning bias, the protester has the heavy burden of proving its case, and unfair or prejudicial motives will not be attributed to evaluators or selection officials on the basis of inference or supposition. Ensign-Bickford Co., B-211790, Apr. 18, 1984, 84-1 CPD ¶ 439. A protester bears the burden of proving that offerors in the competition were not treated fairly and equally and must provide "hard facts" showing actual bias. Booz, Allen & Hamilton, 63 Comp. Gen. 599 (1984), 84-2 CPD ¶ 329; A-E Systems Management, Inc., B-211904.2, Apr. 23, 1984, 84-1 CPD ¶ 454. Moreover, even where bias is shown, we will deny a protest if there is no indication that the bias adversely affected the protester's competitive standing. Reliability Sciences, Inc., B-205754.2, June 7, 1983, 83-1 CPD ¶ 612. Rather, our role in such instances is to determine if there is a reasonable basis for the evaluation. Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 CPD ¶ 91.

In our view, the record does not support HSQ's allegation that two members of the Corps' evaluation team were biased against HSQ. The record shows that one of the allegedly biased evaluators was not even involved in the evaluation of HSQ's proposal. In addition, our review demonstrates no major differences among the evaluators in the scoring of HSQ's proposal. It appears that HSQ has attempted to infer bias or prejudicial motives because of past differences between HSQ and Corps personnel. However, such inferences do not meet the protester's burden of proving its case.

HSQ has offered no evidence which shows that the scoring of its proposal was a result of anything other than the reasonable judgment of the Corps' technical evaluators. We note that HSQ's proposal was considered technically acceptable by the Corps. Also, our review of the record indicates that HSQ was scored lower in many areas because it failed to provide sufficient data and sufficient backup information regarding the technical aspects of its proposal. It is not the function of our Office to rescore proposals nor will we make independent judgments as to the numerical scores which should have been assigned. Blurton, Banks and Assoc., Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238. Although HSQ may disagree, the protester's mere disagreement does not meet the protester's burden of showing that the evaluation was unreasonable. Spectrum Leasing Corp., B-205781, Apr. 26, 1982, 82-1 CPD ¶ 383. We cannot conclude that the evaluation lacked a reasonable basis nor do we find any evidence of actual bias.

With respect to HSQ's allegation that the Corps should have conducted discussions with HSQ, we note that award properly may be made on the basis of initial proposals if adequate competition is obtained, to ensure a fair and reasonable price, and the RFP, as in this case, advises offerors of the possibility that an award might be made without discussions. R&B Rubber and Engineering, Inc., B-214299, June 5, 1984, 84-1 CPD ¶ 595. Here, there were five offerors and, although Williams Electric's offer was not the lowest received, its price was lower than the government's estimate and considered fair and reasonable by the Corps. While HSQ alleges that Williams Electric did not meet all of the RFP's technical requirements, this allegation is based upon the fact that Williams Electric did not receive a perfect technical score. However,

numerical scores reflect the judgments of the technical evaluators as to the technical superiority of one proposal over another and a less than perfect score does not demonstrate that a proposal is unacceptable. Global Associates, B-212820, Apr. 9, 1984, 84-1 CPD ¶ 394. The Corps found that Williams Electric's proposal was technically acceptable, and we see nothing objectionable in the Navy's decision not to conduct discussions. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396.

Finally, we find HSQ's objections to the RFP's evaluation factors and the allegedly imprecise relationships of price to the other factors to be untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), protests concerning alleged solicitation improprieties apparent prior to the closing date for receipt of proposals must be filed prior to that date. Consequently, HSQ's allegations concerning the alleged deficiencies in the evaluation criteria are untimely and will not be considered. Crown Point Coachworks, et al., B-208694, et al., Sept. 29, 1983, 83-2 CPD ¶ 386.

The protest is denied in part and dismissed in part.

for *Seymour Efron*
Harry R. Van Cleave
General Counsel